

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIAN JOSEPH STOLTIE,)
) Civil Action No. 21-267
Plaintiff,)
)
vs.) U.S. District Judge Arthur J. Schwab
) U.S. Magistrate Judge Patricia Dodge
GINA CERILLI, ET AL.,)
)
Defendants.)

**ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. 35) AND
GRANTING DEFENDANTS GINA CERILLI, GEORGE LOWTHER, ERIC SWARTZ,
MR. FAGAN, MR. MARTIN, MR. PALMER, MR. CORUSO, AND NIKKI CRAMER'S
PARTIAL MOTION TO DISMISS (DOC. 19)**

AND NOW, this 15th day of February, 2022, after: (1) Plaintiff, Brian Joseph Stoltie's Complaint was filed in this action on April 5, 2021 (Doc. 5);¹ (2) a partial Motion to Dismiss was filed by Defendants Gina Cerilli, George Lowther, Eric Swartz, Mr. Fagan, Mr. Martin, Mr. Palmer, Mr. Coruso, and Nikki Cramer on July 29, 2021 (Doc. 19); (3) a Report and Recommendation was filed on January 14, 2022, by United States Magistrate Judge Patricia L. Dodge (Doc. 35), granting Defendants' partial Motion to Dismiss, in part with prejudice, and in part without prejudice to Plaintiff to amend his Complaint, and allowing the parties until January 28, 2022 to file objections thereto; (4) the Court allowed Plaintiff additional time, until February 21, 2022, to file written objections thereto (Doc. 43); and (5) Plaintiff filed Objections on February 2, 2022 (Doc. 47), upon consideration of the Objections filed by Plaintiff, which the

¹ By way of Motion, on January 18, 2022, Plaintiff sought to supplement his Complaint. (Doc. 36). On February 11, 2022, Magistrate Judge Dodge granted Plaintiff's Motion to supplement his Complaint, and ordered the Clerk of Court to file Plaintiff's Supplement. (Doc. 45). Plaintiff's Supplement was filed on February 11, 2022. (Doc. 50). Nothing contained in Plaintiff's Supplement is relevant, or material, to Defendants' pending Partial Motion to Dismiss.

Court finds are without merit,² and upon independent review of the Record, and upon consideration of the Magistrate Judge Dodge's thorough Report and Recommendation,

IT IS HEREBY ORDERED that the Magistrate Judge's January 14, 2022 Report and Recommendation is adopted as the Opinion of this Court.

IT IS FURTHER HEREBY ORDERED that, for the reasons set forth in the Magistrate Judge's January 14, 2022 Report and Recommendation, Defendants' partial Motion to Dismiss (Doc. 19) is GRANTED as follows:

1. The claim against Defendants Mr. Martin and Nikki Cramer, only to the extent it seeks emotional damages related to Count 7 of Plaintiff's Complaint, is DISMISSED WITH PREJUDICE;

2. The claims against Defendant Gina Cerilli, in her official capacity, ARE DISMISSED WITH PREJUDICE;

3. The claims against Defendant Gina Cerilli, in her individual capacity, ARE DISMISSED WITHOUT PREJUDICE, and with leave to amend. Any amendment must plead specific facts that establish the personal involvement of Defendant Cerilli in the alleged constitutional violations.

4. The claim for emotional damages against Defendant George Lowther, Eric Swartz, Mr. Fagan, Mr. Palmer, and Mr. Coruso, ARE DISMISSED WITHOUT PREJUDICE, and with leave to amend. Any amendment must plead specific facts as to each of these defendants that

² While some of Plaintiff's Objections to the R&R address factual allegations that are set forth in Plaintiff's Complaint (Doc. 12), Plaintiff also objects to the R&R based upon factual allegations which are not set forth in, and cannot be reasonably inferred from, Plaintiff's Complaint. It behooves Plaintiff, in filing his Amended Complaint, to include in his Amended Complaint, all factual allegations that support his claims against Defendants.

supports a claim that their actions caused physical injury to Plaintiff.

Furthermore, the Court concludes that under the circumstances presented here, Plaintiff may, if he so chooses, file an amended complaint to attempt to cure the pleading deficiencies set forth above with respect to those claims that are dismissed without prejudice.³ Alternatively, Plaintiff may choose to proceed with his Complaint (Doc. 8) as it stands except for those claims which this Court has dismissed by way of the instant Order of Court.

s/Arthur J. Schwab
ARTHUR J. SCHWAB
United States District Judge

cc: Honorable Patricia L. Dodge
United States Magistrate Judge

Brian Joseph Stoltie
1009-2020
Westmoreland County Prison
3000 South Grande Boulevard
Greensburg, PA 15601

All ECF-registered Counsel of Record

³ While Plaintiff asks this Court to allow him 120 days to file an Amended Complaint, the Court finds that Magistrate Judge Dodge, as the judge responsible for pre-trial matters in this civil case, shall issue a Scheduling Order, forthwith, that sets forth the date by which Plaintiff shall file any Amended Complaint in this case.